

SECOND REGULAR SESSION

HOUSE BILL NO. 2275

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE JOHNSON.

Read 1st time February 27, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5339L.01I

AN ACT

To repeal sections 191.225 and 595.045, RSMo, and to enact in lieu thereof three new sections relating to forensic examinations.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 191.225 and 595.045, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 191.225, 595.045, and 595.107, to read as follows:

191.225. 1. [The department of health and senior services shall make payments to appropriate medical providers, out of appropriations made for that purpose, to cover the charges of the forensic examination of persons who may be a victim of a sexual offense if:

(1) The victim or the victim's guardian consents in writing to the examination;

(2) The report of the examination is made on a form approved by the attorney general with the advice of the department of health and senior services; and

(3) The report of the examination is filed with the prosecuting attorney of the county in which the alleged incident occurred.] **For purposes of this section, the following terms mean:**

(1) **"Appropriate medical provider", any licensed nurse, physician, or physician assistant, and any institution employing licensed nurses, physicians, or physician assistants; provided that such licensed professionals are the only persons at such institution to perform tasks under the provisions of this section;**

(2) **"Evidentiary collection kit", a kit used during a forensic examination that includes materials necessary for appropriate medical providers to gather evidence in**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 accordance with the forms and procedures developed by the attorney general for forensic
16 examinations;

17 (3) "Forensic examination", an examination performed by an appropriate medical
18 provider on a victim of an alleged offense included under chapter 566, RSMo, to gather
19 evidence for the evidentiary collection kit;

20 (4) "Medical treatment", the treatment of all injuries and health concerns resulting
21 directly from a patient's sexual assault or victimization.

22 2. The appropriate medical provider shall file [the] a forensic report of the examination
23 with the prosecuting attorney of the county in which the alleged offense occurred within
24 three business days of completion of the forensic exam.

25 [2.] 3. A minor may consent to examination under this section. Such consent is not
26 subject to disaffirmance because of minority, and consent of parent or guardian of the minor is
27 not required for such examination. The appropriate medical provider making the examination
28 shall give written notice to the parent or guardian of a minor that such an examination has taken
29 place. If the appropriate medical provider reasonably believes the offender could be a
30 parent or guardian of the victim and the victim is a minor under the age of eighteen, the
31 medical provider shall only be required to provide written notice to the nonoffending
32 parent or guardian of the examination.

33 [3.] 4. The attorney general, with the advice of the department of health and senior
34 services, shall develop the forms and procedures for gathering evidence during the forensic
35 examination under the provisions of this section. Separate forms and procedures shall be
36 developed for victims age fourteen and younger and victims age fifteen and older. The
37 department of health and senior services shall develop a checklist for appropriate medical
38 providers to refer to while providing medical treatment to victims of a sexual offense. Separate
39 checklists shall be developed for victims age fourteen and younger and victims age fifteen
40 and older.

41 [4.] 5. Evidentiary collection kits shall be developed and made available, subject to
42 appropriation, to appropriate medical providers by the highway patrol or its designees and
43 eligible crime laboratories. Such kits shall be distributed with the forms and procedures for
44 gathering evidence during forensic examinations of victims of a sexual offense to appropriate
45 medical providers upon request of the provider, in the amount requested, and at no charge to the
46 medical provider. All appropriate medical providers shall, with the written consent of the victim,
47 perform a forensic examination using the evidentiary collection kit and forms and procedures for
48 gathering evidence following the checklist for any person presenting as a victim of a sexual
49 offense.

50 [5.] 6. All appropriate medical provider charges for eligible forensic examinations shall
51 be billed to and paid by the department of [health and senior services] **public safety as provided**
52 **in section 595.107, RSMo.** No appropriate medical provider conducting forensic examinations
53 and providing medical treatment to victims of sexual offenses shall charge the victim for the
54 forensic examination. For appropriate medical provider charges related to the medical treatment
55 of victims of sexual offenses, if the victim is an eligible claimant under the crime victims'
56 compensation fund, the appropriate medical provider shall seek compensation under sections
57 595.010 to 595.075, RSMo.

58 [6. For purposes of this section, the following terms mean:

59 (1) "Appropriate medical provider", any licensed nurse, physician, or physician assistant,
60 and any institution employing licensed nurses, physicians, or physician assistants; provided that
61 such licensed professionals are the only persons at such institution to perform tasks under the
62 provisions of this section;

63 (2) "Evidentiary collection kit", a kit used during a forensic examination that includes
64 materials necessary for appropriate medical providers to gather evidence in accordance with the
65 forms and procedures developed by the attorney general for forensic examinations;

66 (3) "Forensic examination", an examination performed by an appropriate medical
67 provider on a victim of an alleged sexual offense to gather evidence for the evidentiary collection
68 kit;

69 (4) "Medical treatment", the treatment of all injuries and health concerns resulting
70 directly from a patient's sexual assault or victimization.]

595.045. 1. There is established in the state treasury the "Crime Victims' Compensation
2 Fund". A surcharge of seven dollars and fifty cents shall be assessed as costs in each court
3 proceeding filed in any court in the state in all criminal cases including violations of any county
4 ordinance or any violation of criminal or traffic laws of the state, including an infraction and
5 violation of a municipal ordinance; except that no such fee shall be collected in any proceeding
6 in any court when the proceeding or the defendant has been dismissed by the court or when costs
7 are to be paid by the state, county, or municipality. A surcharge of seven dollars and fifty cents
8 shall be assessed as costs in a juvenile court proceeding in which a child is found by the court
9 to come within the applicable provisions of subdivision (3) of subsection 1 of section 211.031,
10 RSMo.

11 2. Notwithstanding any other provision of law to the contrary, the moneys collected by
12 clerks of the courts pursuant to the provisions of subsection 1 of this section shall be collected
13 and disbursed in accordance with sections 488.010 to 488.020, RSMo, and shall be payable to
14 the director of the department of revenue.

15 3. The director of revenue shall deposit annually the amount of two hundred fifty
16 thousand dollars to the state forensic laboratory account administered by the department of public
17 safety to provide financial assistance to defray expenses of crime laboratories if such analytical
18 laboratories are registered with the federal Drug Enforcement Agency or the Missouri department
19 of health and senior services. Subject to appropriations made therefor, such funds shall be
20 distributed by the department of public safety to the crime laboratories serving the courts of this
21 state making analysis of a controlled substance or analysis of blood, breath or urine in relation
22 to a court proceeding.

23 4. **Notwithstanding any other provision of law to the contrary, money in the crime**
24 **victims' compensation fund may be deposited into the sexual offense forensic examination**
25 **compensation fund created under section 595.107.**

26 5. The remaining funds collected under subsection 1 of this section shall be denoted to
27 the payment of an annual appropriation for the administrative and operational costs of the office
28 for victims of crime and, if a statewide automated crime victim notification system is established
29 pursuant to section 650.310, RSMo, to the monthly payment of expenditures actually incurred
30 in the operation of such system. Additional remaining funds shall be subject to the following
31 provisions:

32 (1) On the first of every month, the director of revenue or the director's designee shall
33 determine the balance of the funds in the crime victims' compensation fund available to satisfy
34 the amount of compensation payable pursuant to sections 595.010 to 595.075, excluding sections
35 595.050 and 595.055;

36 (2) **On September 1, 2008, and on the first of each month, the director or the**
37 **director's designee may deposit money from the crime victims' compensation fund into the**
38 **sexual offense forensic examination compensation fund as created under section 595.107**
39 **before distributing and depositing the remaining money as required by subdivision (3) of**
40 **this subsection;**

41 (3) Beginning on September 1, 2004, and on the first of each month, the director of
42 revenue or the director's designee shall deposit fifty percent of the balance of funds available to
43 the credit of the crime victims' compensation fund and fifty percent to the services to victims'
44 fund established in section 595.100.

45 [5.] 6. The director of revenue or such director's designee shall at least monthly report
46 the moneys paid pursuant to this section into the crime victims' compensation fund and the
47 services to victims fund to the [division of workers' compensation and the] department of public
48 safety[, respectively].

49 [6.] 7. The moneys collected by clerks of municipal courts pursuant to subsection 1 of
50 this section shall be collected and disbursed as provided by sections 488.010 to 488.020, RSMo.

51 Five percent of such moneys shall be payable to the city treasury of the city from which such
52 funds were collected. The remaining ninety-five percent of such moneys shall be payable to the
53 director of revenue. The funds received by the director of revenue pursuant to this subsection
54 shall be distributed as follows:

55 (1) On the first of every month, the director of revenue or the director's designee shall
56 determine the balance of the funds in the crime victims' compensation fund available to satisfy
57 the amount of compensation payable pursuant to sections 595.010 to 595.075, excluding sections
58 595.050 and 595.055;

59 (2) **On September 1, 2008, and on the first of each month, the director or the**
60 **director's designee may deposit money from the crime victims' compensation fund into the**
61 **sexual offense forensic examination compensation fund, as created under section 595.107**
62 **before distributing and depositing the remaining money as required by subdivision (3) of**
63 **this subsection;**

64 (3) Beginning on September 1, 2004, and on the first of each month the director of
65 revenue or the director's designee shall deposit fifty percent of the balance of funds available to
66 the credit of the crime victims' compensation fund and fifty percent to the services to victims'
67 fund established in section 595.100.

68 [7.] 8. These funds shall be subject to a biennial audit by the Missouri state auditor.
69 Such audit shall include all records associated with crime victims' compensation funds collected,
70 held or disbursed by any state agency.

71 [8.] 9. In addition to the moneys collected pursuant to subsection 1 of this section, the
72 court shall enter a judgment in favor of the state of Missouri, payable to the crime victims'
73 compensation fund, of sixty-eight dollars upon a plea of guilty or a finding of guilt for a class
74 A or B felony; forty-six dollars upon a plea of guilty or finding of guilt for a class C or D felony;
75 and ten dollars upon a plea of guilty or a finding of guilt for any misdemeanor under Missouri
76 law except for those in chapter 252, RSMo, relating to fish and game, chapter 302, RSMo,
77 relating to drivers' and commercial drivers' license, chapter 303, RSMo, relating to motor vehicle
78 financial responsibility, chapter 304, RSMo, relating to traffic regulations, chapter 306, RSMo,
79 relating to watercraft regulation and licensing, and chapter 307, RSMo, relating to vehicle
80 equipment regulations. Any clerk of the court receiving moneys pursuant to such judgments
81 shall collect and disburse such crime victims' compensation judgments in the manner provided
82 by sections 488.010 to 488.020, RSMo. Such funds shall be payable to the state treasury and
83 deposited to the credit of the crime victims' compensation fund.

84 [9.] 10. The clerk of the court processing such funds shall maintain records of all
85 dispositions described in subsection 1 of this section and all dispositions where a judgment has
86 been entered against a defendant in favor of the state of Missouri in accordance with this section;

87 all payments made on judgments for alcohol-related traffic offenses; and any judgment or portion
88 of a judgment entered but not collected. These records shall be subject to audit by the state
89 auditor. The clerk of each court transmitting such funds shall report separately the amount of
90 dollars collected on judgments entered for alcohol-related traffic offenses from other crime
91 victims' compensation collections or services to victims collections.

92 [10.] **11.** The department of revenue shall maintain records of funds transmitted to the
93 crime victims' compensation fund by each reporting court and collections pursuant to subsection
94 16 of this section and shall maintain separate records of collection for alcohol-related offenses.

95 [11.] **12.** The state courts administrator shall include in the annual report required by
96 section 476.350, RSMo, the circuit court caseloads and the number of crime victims'
97 compensation judgments entered.

98 [12.] **13.** All awards made to injured victims under sections 595.010 to 595.105 and all
99 appropriations for administration of sections 595.010 to 595.105, except sections 595.050 and
100 595.055, shall be made from the crime victims' compensation fund. Any unexpended balance
101 remaining in the crime victims' compensation fund at the end of each biennium shall not be
102 subject to the provision of section 33.080, RSMo, requiring the transfer of such unexpended
103 balance to the ordinary revenue fund of the state, but shall remain in the crime victims'
104 compensation fund. In the event that there are insufficient funds in the crime victims'
105 compensation fund to pay all claims in full, all claims shall be paid on a pro rata basis. If there
106 are no funds in the crime victims' compensation fund, then no claim shall be paid until funds
107 have again accumulated in the crime victims' compensation fund. When sufficient funds become
108 available from the fund, awards which have not been paid shall be paid in chronological order
109 with the oldest paid first. In the event an award was to be paid in installments and some
110 remaining installments have not been paid due to a lack of funds, then when funds do become
111 available that award shall be paid in full. All such awards on which installments remain due
112 shall be paid in full in chronological order before any other postdated award shall be paid. Any
113 award pursuant to this subsection is specifically not a claim against the state, if it cannot be paid
114 due to a lack of funds in the crime victims' compensation fund.

115 [13.] **14.** When judgment is entered against a defendant as provided in this section and
116 such sum, or any part thereof, remains unpaid, there shall be withheld from any disbursement,
117 payment, benefit, compensation, salary, or other transfer of money from the state of Missouri to
118 such defendant an amount equal to the unpaid amount of such judgment. Such amount shall be
119 paid forthwith to the crime victims' compensation fund and satisfaction of such judgment shall
120 be entered on the court record. Under no circumstances shall the general revenue fund be used
121 to reimburse court costs or pay for such judgment. The director of the department of corrections
122 shall have the authority to pay into the crime victims' compensation fund from an offender's

123 compensation or account the amount owed by the offender to the crime victims' compensation
124 fund, provided that the offender has failed to pay the amount owed to the fund prior to entering
125 a correctional facility of the department of corrections.

126 [14.] **15.** All interest earned as a result of investing funds in the crime victims'
127 compensation fund shall be paid into the crime victims' compensation fund and not into the
128 general revenue of this state.

129 [15.] **16.** Any person who knowingly makes a fraudulent claim or false statement in
130 connection with any claim hereunder is guilty of a class A misdemeanor.

131 [16.] **17.** Any gifts, contributions, grants or federal funds specifically given to the
132 [division] **department** for the benefit of victims of crime shall be credited to the crime victims'
133 compensation fund. Payment or expenditure of moneys in such funds shall comply with any
134 applicable federal crime victims' compensation laws, rules, regulations or other applicable
135 federal guidelines.

**595.107. 1. There is hereby created in the state treasury the "Sexual Offense
2 Forensic Examination Compensation Fund", which shall consist of funds from the crime
3 victims' compensation fund, state general revenue fund, and federal funds. The state
4 treasurer shall be the custodian of the fund and may approve disbursements from the fund
5 in accordance with sections 30.170 and 30.180, RSMo. The department of public safety
6 shall administer the fund, which shall be used solely to make payments to appropriate
7 medical providers to cover the charges of the forensic examination of persons who may be
8 a victim of a sexual offense if:**

9 **(1) The victim or the victim's guardian consents in writing to the examination, so
10 as to demonstrate cooperation with law enforcement authorities;**

11 **(2) The report of the examination is made on a form approved by the attorney
12 general with the advice of the department of health and senior services; and**

13 **(3) The report of the examination is filed with the prosecuting attorney of the
14 county in which the alleged incident occurred.**

15 **Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys
16 remaining in the fund at the end of the biennium shall not revert to the credit of the
17 general revenue fund. The state treasurer shall invest moneys in the fund in the same
18 manner as other funds are invested. Any interest and moneys earned on such investments
19 shall be credited to the fund.**

20 **2. The department of public safety shall promulgate rules and regulations
21 establishing which procedures performed by appropriate medical providers shall qualify
22 for coverage under the sexual offense forensic examination compensation fund and
23 establishing the reimbursement rates for such procedures. The checklists for appropriate**

24 medical providers under section 191.225, RSMo, shall be used and considered when
25 promulgating the rules and regulations. Any rule or portion of a rule, as that term is
26 defined in section 536.010, RSMo, that is created under the authority delegated in this
27 section shall become effective only if it complies with and is subject to all of the provisions
28 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter
29 536, RSMo, are nonseverable and if any of the powers vested with the general assembly
30 pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and
31 annul a rule are subsequently held unconstitutional, then the grant of rulemaking
32 authority and any rule proposed or adopted after August 28, 2008, shall be invalid and
33 void.

34 3. For the purposes of this section, the following terms shall mean:

35 (1) "Appropriate medical provider", any licensed nurse, physician, or physician
36 assistant, and any institution employing licensed nurses, physicians, or physician assistant;
37 provided that such licensed professionals are the only persons at such institution to
38 perform tasks under the provisions of this section;

39 (2) "Evidentiary collection kit", a kit used during a forensic examination that
40 includes materials necessary for appropriate medical providers to gather evidence in
41 accordance with the forms and procedures developed by the attorney general for forensic
42 examinations;

43 (3) "Forensic examination", an examination performed by an appropriate medical
44 provider on a victim of an alleged offense included under chapter 566, RSMo, to gather
45 evidence for the evidentiary collection kit;

46 (4) "Medical treatment", the treatment of all injuries and health concerns resulting
47 directly from a patient's sexual assault or victimization.

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